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C O N F I D E N T I A L SECTION 01 OF 03 ISLAMABAD 001933

SIPDIS

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TAGS: [PGOV](#) [PK](#) [PREL](#) [KJUS](#)

SUBJECT: CONSTITUTIONAL HURDLES FOR PROPOSED 18TH AMENDMENT

REF: A. ISLAMABAD 1894

[1](#)B. ISLAMABAD 1867

Classified By: Anne W. Patterson, Reasons 1.4 (b), (d)

[1](#)1. (C) Summary: Pakistan People's Party (PPP) this week prepared and appears ready to present an omnibus amendments package to reinstate the pre-November 3 judiciary, indemnify President Pervez Musharraf for his actions related to the judges' removal, and diminish significantly the possibility of the National Assembly being dissolved prematurely. This proposal is a reasonable compromise, but is likely to prove disagreeable to both Musharraf's Pakistan Muslim League (PML) and arch-rival Nawaz Sharif's Pakistan Muslim League-N (PML-N). The proposed 18th amendment to Pakistan's Constitution needs two-thirds support in both the National Assembly and Senate, separately. The PML-N's support in the National Assembly will be critical for passage of the amendment bill; the PML's support in the Senate is indispensable. Securing the support of both is a long shot. End summary.

Proposed 18th Amendment Package

[1](#)2. (C) Law Minister Farooq Naek announced May 20 that he finalized the draft of an 18th amendment to Pakistan's Constitution (reftels). Naek told PolOff May 20 that he had "crashed most of the weekend" to get the proposal ready for Pakistan People's Party (PPP) Co-Chairman Asif Zardari. Zardari confirmed to the Ambassador May 21 that he was reviewing the proposal, which would be presented to the federal cabinet after his party's May 24 central executive committee (CEC) meeting.

[1](#)3. (C) Zardari revealed that the outlines of the constitutional package had been shared with Chief of Army Staff (COAS) Ashfaq Kayani, and he was, in general, supportive. The draft was also expected to go to PPP coalition partners Pakistan Muslim League-Nawaz (PML-N), Awami National Party (ANP) and Jamiat Ulema-e-Islam (JUI-F). None of these political parties, however, have thus far reacted publicly to the proposal.

[1](#)4. (C) The PPP's proposed 18th amendment would repeal the Constitution's Article 58(2)(b), which gives the President broad powers to dissolve the National Assembly if "a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution...." However, if the majority party's Prime Minister loses a vote of confidence, the President's dissolution power would remain intact.

¶5. (C) Additionally, Naek mentioned that the package would curtail the President's authority to make key military appointments, but, in exchange, indemnify Musharraf of any extra-constitutional actions during the late 2007 state of emergency. The pre-November 3 judiciary would be reinstated, though the status of former Chief Justice Iftikhar Chaudhry remains unclear, and the Constitution's Article 6 would be amended to make the ratification of unconstitutional acts by any judge a treasonous offense.

Very Privately, Nervous Reactions

¶6. (C) The Ambassador met May 23 with Musharraf's NSA Tariq Aziz. Aziz said he had just finished meeting with Law Minister Naek about his draft constitutional package. Naek reportedly said that another committee of constitutional lawyers would review the package; there was no deadline on the committee.

¶7. (C) Aziz claimed Musharraf could be flexible on abolishing or modifying 58(2)(b) but would want to keep the power to appoint judges, military chiefs and election commissioners. Hinting at another compromise formula, Aziz also noted that during summer 2007 Musharraf-Bhutto discussions on 58(2)(b), the two leaders agreed that if the President dissolved the National Assembly, he, too, would resign.

¶8. (C) Contrary to Zardari's impression of Kayani's reaction to the proposal (para 3), Aziz claimed that Kayani was

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worried about the amendments package and possible negative reactions from Musharraf (and all sides). Kayani was supposedly so worried that he called up Musharraf's Military Secretary General Shafkat at one in the morning last night to discuss for three hours all possible scenarios.

¶9. (C) The Ambassador asked if Zardari had yet met with Musharraf one-on-one, as she has suggested; "no," Aziz informed, but Prime Minister Yousuf Raza Gilani would see Musharraf in the next few days. Coalition partner ANP's Asfandiyar Wali Khan may also accompany, Aziz mentioned, though, meeting with Peshawar PO May 23, Khan would not yet commit to attend this meeting with Musharraf.

¶10. (C) Meanwhile, in May 23 meetings, ANP's Khan, Information Minister Sherry Rehman and Human Rights Commission of Pakistan Co-Chair Asma Jehangir passed on rumors to Peshawar PO and the Ambassador, respectively, that Musharraf is planning to dissolve the National Assembly and install a "national unity government." (Note: Musharraf really has only two principal choices: either use 58(2)(b) before it is abolished or allow it to be amended.)

From Here to There

¶11. (C) Speaking to the Ambassador May 21, Zardari admitted that both Musharraf's Pakistan Muslim League (PML) and Sharif's PML-N, as well as the lawyers' movement, may have problems with this "global deal." However, he viewed this as a workable compromise and believed he had the votes to pass what would be the 18th amendment to Pakistan's Constitution. In order to amend Pakistan's Constitution, under Article 239, two-thirds of each house, separately, must approve the change.

PML-N Critical in National Assembly

¶12. (C) Therefore, in the National Assembly, 229 votes will be needed to pass a constitutional amendment. The PPP and PML-N are, by themselves, within striking distance of this target. If the two smaller coalition partners, ANP and JUI-F, are added, the GOP can count on only 228 votes.

Independents and other single-digit, regionally-based parties would likely also jump on the bandwagon. And even though officially part of the opposition at the federal level, the PPP can likely count on the support of Karachi's Muttahida Qaumi Movement (MQM) at 25 votes.

¶13. (C) If the PML-N, however, finds this compromise package unacceptable, probably prompting it also to leave the coalition, the math becomes more difficult. With the remaining three parties of the current federal coalition -- PPP, ANP and JUI-F -- the amendment would only receive about 141 votes of the 229 votes needed.

¶14. (C) If all the other parties currently on the opposition bench, including Musharraf's PML, joined the PPP, the amendment would pass with about 246 votes. With only a 17-vote buffer (246 minus 229), all of the 17 independents would have to be retained. This is not at all guaranteed. The PML's 54 votes are also critical to get past the 229-vote line. Though some PPP contacts have floated the idea of aligning just with a PML "forward block" (sans Chaudhry leadership), it would probably not be enough to help the PPP get to 229.

PML Indispensable in Senate

¶15. (C) In the Senate, 67 votes will be needed to pass a constitutional amendment. The PPP's current coalition of four parties, including the PML-N, is only 28 strong; religious party JUI-F is the single largest contributor at 12 votes. On the other hand, Musharraf's PML has about 40 senators. And though eight of these 40 have recently shown an "independent streak," there are still about 32 votes which Musharraf can likely bank on. Thus, the PPP's amendment package would have to get the support of all the other senators to cross the finish line.

¶16. (C) PML President Chaudhry Shujaat confided in the Ambassador late May 23 that he did not believe he could keep

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all of his party's senators in line. "We do not have the votes to block it," he added. Speaking frankly, Shujaat did not see how politicians could vote against such a popular measure that would increase the power of the parliament.

¶17. (C) Comment: It is the above math that makes the PPP's proposed 18th amendment a long shot, but it is also what will force compromise, assuming the PML-N and PML, at either end of the spectrum on these issues, want compromise. While a package can garner two-thirds support in the National Assembly without PML-N's support, it would be tight and would be a headache to negotiate with a gaggle of tiny parties. Musharraf's concurrence, however, is similarly needed because the package must get through the Senate. To get to 67 senators without the PML is nearly impossible.

¶18. (C) It is the math of the calendar that is less calculable. By presenting such an omnibus amendments package, pleasing neither the PML-N nor the PML, can the PPP-led GOP move on to other more pressing issues, including national security and economic stability? Or will negotiations to get an 18th amendment through both houses distract the PPP leadership through the long, hot summer ahead? End comment.

PATTERSON